

NOV 27 1940

CHARLES E. LINDSEY, JR.

IN THE  
**Supreme Court of the United States**

October Term, 1940

No. 597.

THE TEXAS COMPANY,

*Petitioner,*

*vs.*

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

---

**PETITION FOR A WRIT OF CERTIORARI TO  
THE CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT AND BRIEF IN SUPPORT  
THEREOF.**

---

HARRY T. KLEIN,

A. E. VAN DUSEN,

JAMES T. NIELSEN,

*Attorneys for Petitioner,*

135 East 42nd Street,

New York, N. Y.

---

---



## SUBJECT INDEX

---

	PAGE
Petition .....	1-6
Summary and Statement of Matter Involved.....	1
Opinions Below .....	4
Jurisdictional Statement .....	4
Questions Presented .....	4
Reasons Relied on for Allowing the Writ.....	5
Brief in Support of Petition.....	7-13
Argument .....	7
Conclusion .....	10
Appendix .....	11

### Table of Cases.

In re Labor Board, 304 U. S. 486.....	5, 8, 9
---------------------------------------	---------

### Statutes.

National Labor Relations Act, 49 Stat. 449.....	11
Section 2(6) and (7).....	2
Section 8(1) .....	2
Section 10(e) and (f).....	6, 7, 8, 9



IN THE  
**Supreme Court of the United States**

---

**October Term, 1940**

**No. ....**

---

THE TEXAS COMPANY,

*Petitioner,*

*vs.*

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

---

**PETITION FOR A WRIT OF CERTIORARI TO  
THE CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT AND BRIEF IN SUPPORT  
THEREOF.**

*To the Honorable, the Chief Justice and the Associate Jus-  
tices of the Supreme Court of the United States:*

The petitioner, The Texas Company, prays a writ of certiorari to review the order of the Circuit Court of Appeals for the Seventh Circuit, entered in this cause on September 28, 1940, dismissing the petition of The Texas Company to review and set aside a decision and order of the National Labor Relations Board, dated July 3, 1940.

**Summary and Statement of Matter Involved.**

This case arises out of certain charges filed by the National Maritime Union of America (hereinafter referred to as "Union"), pursuant to which the National Labor Relations Board (hereinafter referred to as "Board"), under

date of January 3, 1939, issued a complaint alleging that the petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(1) and Section 2(6) and (7) of the National Labor Relations Act (hereinafter sometimes referred to as "Act"), in that petitioner refused to grant passes to the union's representatives for the purpose of obtaining access to employes of petitioner on board petitioner's tank vessels (Transcript of Record, p. 2). Similar complaints were issued by the Board against Cities Service Oil Company and The Pure Oil Company, and the three proceedings were consolidated. Petitioner filed an answer which admitted that petitioner's policy had been to deny passes to everyone desiring to board its vessels other than duly authorized employes and representatives of the petitioner, and alleged that in carrying out said policy petitioner had not in any way or at any time discriminated between any labor organizations (Transcript of Record, p. 2). The answer alleged that in the light of these facts petitioner's refusal to grant passes was not an unfair labor practice, and further alleged that in the event the National Labor Relations Act was construed to require petitioner to issue passes, then such Act, as so construed, violated the Fifth Amendment to the Constitution of the United States (Transcript of Record, p. 2). On the issues thus raised lengthy hearings were held, and an oral argument was had before the Board. Thereafter, on July 3, 1940, the Board issued a decision and order finding that the petitioner, by its refusal to grant passes to the union's representatives to board petitioner's vessels, had interfered with, restrained, and coerced petitioner's employes in the exercise of the rights guaranteed them in Section 7 of the Act and had thereby violated Section 8(1) of the Act (Transcript of Record, p. 4).

On August 26, 1940, petitioner filed in the United States Circuit Court of Appeals for the Seventh Circuit a petition

for review of and to set aside the said decision and order of the Board, dated July 3, 1940, and on the same day served on the Board by registered mail a copy of said petition (Transcript of Record, pp. 1-6). On August 28, 1940, petitioner's attorney requested the Board in writing to file a certified transcript of the proceedings before the Board or to furnish the petitioner with a certified copy of such transcript (Transcript of Record, p. 19). Promptly thereafter Cities Service Oil Company and The Pure Oil Company filed in the United States Circuit Court of Appeals for the Seventh Circuit motions for leave to intervene in the proceeding commenced by the petition for review filed in that circuit by your petitioner (Transcript of Record, p. 18).

Subsequently, on August 31, 1940, the National Labor Relations Board filed in the United States Circuit Court of Appeals for the Second Circuit a petition for enforcement of the order of the Board above referred to, together with a certified transcript of the record of the proceedings before the Board (Transcript of Record, p. 8). The Board then proceeded to file a motion in the Seventh Circuit Court of Appeals to dismiss the petition for review filed by your petitioner upon the ground that no certified transcript of the record had been filed in the Seventh Circuit and that, since a certified transcript had been filed in the Second Circuit, the latter Circuit had exclusive jurisdiction of the case (Transcript of Record, pp. 6-12).

Your petitioner opposed the Board's motion to dismiss upon the ground that its petition for review had been filed in the Seventh Circuit before the Board filed its petition for enforcement in the Second Circuit and on the ground that your petitioner had made demand upon the Board for a certified transcript of the record prior to the time when the Board filed its petition for enforcement and such transcript in the Second Circuit (Transcript of Record, pp.

12-19). Your petitioner also moved in the Seventh Circuit for an order directing the Board to certify and file the record in that Circuit (Transcript of Record, pp. 20-27).

The Pure Oil Company and Cities Service Oil Company filed memoranda opposing the Board's motion to dismiss the petition for review filed in the Seventh Circuit. On September 28, 1940, however, the United States Circuit Court of Appeals for the Seventh Circuit entered the order which it is here sought to review, granting the motion of the Board to dismiss your petitioner's petition for review (Transcript of Record, pp. 33-34).

### **Opinions Below.**

The decision and order of the National Labor Relations Board is reported as 25 N. L. R. B. No. 12 (official reports not bound). The decision of the Circuit Court of Appeals on the motion to dismiss is not reported and no opinion was rendered by such Court in connection with said decision.

### **Jurisdictional Statement.**

The order of the Circuit Court of Appeals (Transcript of Record, pp. 33-34) was entered on September 28, 1940. The jurisdiction of this Court is based on Section 240(a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 938.

### **Questions Presented.**

The questions presented by the order of the Circuit Court of Appeals, Seventh Circuit, dismissing the petition for review filed by your petitioner, are as follows:

1. Where, pursuant to Section 10(f) of the National Labor Relations Act, a person aggrieved by a final order of the National Labor Relations Board



has filed in the United States Circuit Court of Appeals, in a circuit in which such person resides or transacts business, a written petition for review praying that the order of the Board be modified or set aside, and has demanded of the Board a certified transcript of the entire record in the proceeding, may the Board deprive such Circuit Court of Appeals of jurisdiction by failing or declining to file or furnish a certified copy of the transcript and by subsequently filing a petition for enforcement, together with a certified transcript, in another circuit?

2. Where, pursuant to Section 10(f) of the National Labor Relations Act, a person aggrieved by a final order of the National Labor Relations Board has filed in the United States Circuit Court of Appeals, in a circuit in which such person resides or transacts business, a written petition for review praying that the order of the Board be modified or set aside, and has demanded of the Board a certified transcript of the entire record in the proceeding, what relief, if any, is available to the person who has filed such petition for review, where the Board does not desire to modify or set aside its order but fails or refuses to furnish a transcript of its proceedings?

### **Reasons Relied on for Allowing the Writ.**

It is submitted that the decision of the Circuit Court of Appeals for the Seventh Circuit raises an important question of Federal law which has not been, but should be, settled by this Court. That the question here involved is such a question is indicated by the decision of this Court in *In re Labor Board*, 304 U. S. 486, decided May 31, 1938. In that case it was held that where a petition for review had been filed in the Circuit Court of Appeals, the Board could never-

theless vacate its order and reopen the case at any time before the transcript of the record was filed. In so deciding, this Court referred to the contention of one of the parties that unless jurisdiction was held to vest in the Circuit Court of Appeals upon the filing of the petition for review, the Board could hold the transcript for an indefinite period and thus harass and embarrass a litigant, and delay and perhaps deny any effective judicial review. In commenting on this contention, the Court said:

“No such case is here presented. We have no occasion to determine what, if any, relief may be needed by or available to a party who has filed his petition for review, where the Board does not desire to modify or set aside its order but fails or refuses to furnish a transcript of its proceedings.”

The question referred to in the quoted language is now squarely before this Court for determination. Petitioner respectfully submits that it is a question of great importance which should be decided. Under the construction adopted by the Board and the Circuit Court of Appeals for the Seventh Circuit, the effectiveness of Section 10(f) of the National Labor Relations Act is for all practical purposes nullified, as the Board may in any case in which a petition for review is filed, decline to furnish a certified transcript of the record, thereby depriving the petitioner of its rights under Section 10(f) of the National Labor Relations Act.

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari be granted.

HARRY T. KLEIN,  
ALBERT E. VAN DUSEN,  
JAMES T. NIELSEN,  
*Attorneys for Petitioner.*

